

IN THE SENATE OF THE UNITED STATES.

JUNE 4, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

**REPORT.**

[To accompany Bill S. 436.]

*The Committee on Patents and the Patent Office, to whom was referred the petition of Nathaniel Hayward, ask leave to submit the following report:*

The petitioner represents that he is the original inventor of an important improvement in the manufacture of India rubber goods, his invention consisting in combining sulphur with India rubber; that pending his application for a patent he executed an assignment of his interest in said invention to Charles Goodyear, as assignee of the original invention, for the period of fourteen years; that previous to the expiration of said term the petitioner applied to the Commissioner of Patents, praying that the patent for his invention should be extended for his benefit; that in pursuance of the provision of the law he exhibited to the Commissioner an account, under oath, stating that the whole sum received for the sale of his was \$3,000, and that after deducting from the amount the sum of \$1,825 75 for his expenses and time in perfecting his invention, and in introducing it into use, the total benefit he has received from it is the sum of \$1,174 25, and no more; and he further claims that the Commissioner erroneously refused to extend said patent upon such application.

It appears that Mr. Hayward was one of the first in the country to make experiments in the manufacture of India rubber. He commenced as early as 1831, poor, embarrassed, and with nothing but his own labor and skill to rely upon; yet he pursued his experiments with diligence until he perfected his valuable discovery. Previously, the universal experience in India rubber goods was, that they were dried with difficulty, and when once apparently dried, they would become sticky by being folded together, so that parts lying in contact would be cemented together; and, in other cases, the goods would become soft and sticky simply from exposure to changes of temperature. Hence all the early manufactures of India rubber goods had met with loss, and all the companies formed previous to the date of this patent had been ruined and broken up by these defects in their goods, which they knew no way to overcome. Mr. Hayward discovered, after a great variety of experiments, that there was a chemical affinity between India rubber and sulphur which causes the compound

of these two substances to dry rapidly, and which compound constitutes a new material, and possesses new properties different from those of either of the original substances. The new substance was less sensible to heat and cold than India rubber in its original condition.

This discovery of the petitioner, and the results attained by it, were the utmost advance ever made in the manufacture of India rubber, except the invention of what is familiarly called "the vulcanizing process," which seems conceded to have been the invention of Charles Goodyear.

All the evidence submitted to the committee, as well as the evidence upon the application to the Commissioner, conclusively proved that Hayward was the first and original inventor of this combination of sulphur and India rubber, as described in the specifications of the patent granted upon his application. That the invention was useful, and the inventor has used due diligence in introducing it into public use, is shown from the fact that this combination of sulphur and India rubber is used in almost all articles in the India rubber manufacture. This fact also shows the value and importance to the public of this invention. All these questions were determined in favor of the petitioner upon the application for an extension under the law. The only open question before the Commissioner and before the committee was that of compensation: had the inventor been adequately remunerated for his time, ingenuity, and expense in originating his invention and introducing it into use. The Commissioner determined that Mr. Hayward had received adequate remuneration in the sense of the patent law, but he arrived at this result from the facts and reasoning of which the following is the substance:

Hayward sold his invention to Goodyear for the sum of \$3,000, which was conceded to have been but a very small fraction of its actual value, and no remuneration in the proper sense of the patent laws. But after Mr. Goodyear had made the discovery of the vulcanizing process by the application of heat to the combination of sulphur and rubber, discovered by Hayward, the company of which the latter was a member, in connexion with the other companies, obtained a license to use both his own invention (which Goodyear then owned by purchase) and Goodyear's in the manufacture of India rubber shoes. This license was at a rate or tariff which enabled Hayward's company to make shoes at a profit, and thereby Hayward acquired some property; that is, the inventor had been forced by his impoverished circumstances to sell his invention for a nominal sum entirely disproportionate to its actual value, and which afforded no adequate remuneration in the sense of the patent laws; but his subsequent good fortune in purchasing a license under another patent, as well as under that for the invention he had thus parted with, at a rate which permitted him to make money, should be taken into account against him when he seeks to obtain the reward of his own ingenuity by an extension of his patent. Hayward was merely a stockholder in the Hayward Rubber Company, which purchased this license from Goodyear, and all the property he has acquired has been saved by economy from his share in the profits of their business, which have been obtained in great part by his unremitted attention and labor. But the Commissioner decided that because Mr. Hayward had thus acquired some property, he was not

entitled to the privilege which the law secures to a meritorious inventor, although his poverty had compelled him to part with his invention for a mere trifle.

This argument, and the result to which it leads, seems to be an entire mistake and perversion of the object of the patent laws. It would seem to be clear that if Mr. Hayward had received but \$1,174 25 from the forced sale of an invention which had proved of immense value to the public, that his right to an extension of his patent would have been regarded as incontestible; yet he was met and defeated by an argument as strange as this: "Your invention is novel, valuable; the public have been benefitted by its use, and you are compelled by poverty to sell it for a paltry sum; but you saw the value of Good-year's invention; you purchased a license under that, and have made money by it; because you have succeeded in that business, you shall not have the benefit of your own invention during the extended time which the law permits."

The committee do not see any justice or propriety in this argument, or the decision based upon it.

Besides, it was conclusively proved to the committee that not only has the inventor failed to receive any just reward for his invention, but that the public have never paid anything for the use of it. Good-year was the owner of the patent during the whole of the original term. He testifies that he never made any charge for the use of the sulphur patent, and that his tariffs have charged for the use of his vulcanizing patent alone.

Here is a most valuable invention, therefore, for which the patentee has received nothing, or next to nothing, and for the use of which the public have paid nothing. As the object of the patent laws is to afford remuneration, and as the inventor has failed to receive it from his invention without any fault of his own, unless poverty be a fault, it seems to be a case which demands the interference of Congress to correct the mistake of the officer to whom its power of protecting inventors in the useful arts have been delegated. Without such interference a meritorious inventor must submit to the loss of his invention without remuneration, or the hope of it. The public gets the benefit of the discovery without keeping its part of the contract with the inventor, which is to be carried out through the patent laws, by affording him protection for a limited period. Common justice demands that he should have the relief which these laws were intended to afford.

The petitioner has been guilty of no negligence in this matter. As soon as his application to the Commissioner was rejected, he applied to Congress for relief. A bill was passed by the Senate during the last Congress, after an elaborate report by the Committee on Patents, for the extension of his patent, and was favorably reported upon after a laborious investigation by the Committee on Patents in the House of Representatives, but the bill was not reached for action in that body.

The committee have, therefore, arrived at the conclusion that the petitioner is entitled to relief, and herewith report a bill, not for the specific relief prayed for, but allowing him an opportunity for a rehearing before the Commissioner of Patents, without prejudice on account of the former decision or of the expiration of the term of the original letters patent.

